

STATE OF SOUTH DAKOTA
CONSULTING CONTRACT

AGREEMENT made and entered into this 6 day of December, 2010 by and between the Department of Tourism & State Development, South Dakota Arts Council a state agency, of 711 E Wells Ave., Pierre, SD 57501, (the "State") and Americans for the Arts, The National Service Organization for America's Local Arts Agencies, 1000 Vermont Avenue NW, Sixth Floor, Washington, DC 20005 (the "Consultant").

The State hereby enters into this Agreement for services with Consultant in consideration of and pursuant to the terms and conditions set forth herein.

1. The Consultant will perform services for the State as follows: See attached.
2. The Consultant's services under this Agreement shall commence on January 1, 2011 and end on June 30, 2012 unless sooner terminated pursuant to the terms hereof.
3. The Consultant will not use State equipment, supplies or facilities. The Consultant will provide the State with its Employer Identification Number, Federal Tax Identification Number or Social Security Number upon execution of this Agreement.
4. The State will make payment for services to be paid upon satisfactory completion of the services. The State will/will not pay Consultant's expenses as a separate item in an amount not to exceed \$13,500.00. The TOTAL CONTRACT AMOUNT is an amount not to exceed \$13,500.00. Payment will be made pursuant to itemized invoices submitted with a signed state voucher. Payment will be made consistent with SDCL ch. 5-26.
5. The Consultant agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the Consultant to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.
6. The Consultant, at all times during the term of this Agreement, shall obtain and maintain in force applicable insurance coverage of the types as follows:
 - A. Commercial General Liability Insurance: The Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

300

B. Business Automobile Liability Insurance: The Consultant shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

C. Worker's Compensation Insurance: The Consultant shall procure and maintain workers' compensation and employers' insurance as required by South Dakota law.

Before beginning work under this Agreement, Consultant shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. In the event a substantial change in insurance, issuance of a new policy, cancellation or non-renewal of the policy, the Consultant agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Consultant shall furnish copies of insurance policies if requested by the State.

7. While performing services hereunder, the Consultant is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

8. Consultant agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Consultant or the State to liability. Consultant shall report any such event to the State immediately upon discovery.

Consultant's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Consultant's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Consultant to report any event to law enforcement or other entities under the requirements of any applicable law.

9. This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Consultant breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to Consultant at the time of termination may be adjusted to cover any additional costs to the State because of Consultant's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Consultant it is determined that Consultant was not at fault, then the Consultant shall be paid for eligible services rendered and expenses incurred up to the date of termination.

No party shall be liable for a delay in performance or failure to perform its obligations under this Agreement if such delay or failure is due to acts of God or any other event beyond the control of the parties, including, without limitations, fire, explosion, weather, disease, war, insurrection, civil

strife, riots, government action or power failure, provided, however, that the party who is unable to perform resumes performance as soon as possible following the end of the event causing the delay.

10. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

11. This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

13. The Consultant will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

14. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of the State. The Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Consultant will cause its subcontractors, agents, and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

15. Consultant hereby acknowledges and agrees that all reports, plans, specifications, technical data, miscellaneous drawings, software system programs and documentation, procedures, or files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, and all information contained therein provided to the State by the Consultant in connection with its performance of services under this Agreement shall belong to and is the property of the State and will not be used in any way by the Consultant without the written consent of the State. Papers, reports, forms, software programs, source code(s) and other material which are a part of the work under this Agreement will not be copyrighted without written approval of the State.

16. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to Michael Pangburn on behalf of the State, and by Benjamin Davidson, on behalf of the Consultant, or such

authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

17. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

18. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

19. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

In Witness Whereof, the parties signify their agreement effective the date above first written by the signatures affixed below.

STATE

BY: 

Richard Benda
Department Secretary
Dept of Tourism & State Development

CONSULTANT

BY: 

Benjamin Davidson
Americans for the Arts

- State Agency Coding (MSA Center): 0441000229AO/0441000706
- State Agency MSA Company for which contract will be paid: 2010/3143
- Object/subobject MSA account to which voucher will be coded: 52041300
- Name and phone number of contact person in State Agency who can provide additional information regarding this contract: Michael Pangburn, 773-3301

October 29, 2010

Michael Pangburn
Director
South Dakota Arts Council
711 East Wells Avenue
Pierre, SD 57501

Dear Michael:

Thank you for expressing interest in joining *Arts & Economic Prosperity® IV*, Americans for the Arts' fourth national study of the economic impact of spending by nonprofit arts and culture organizations and their audiences. **It is our pleasure to officially invite the South Dakota Arts Council to join the study as one of our project partners.**

Please read this entire document. It includes a description of the project we will undertake, a detailed description of the required responsibilities that we share, and a statement of agreement that requires your signature. Once signed by both parties, this letter of agreement will serve as a **contract** between Americans for the Arts and the South Dakota Arts Council for the 18 month period beginning January 1, 2011 and ending June 30, 2012.

CONFIRM YOUR STATUS AS AN OFFICIAL STUDY PARTNER

Follow the steps below to officially join the *Arts & Economic Prosperity IV* study:

1. Read this entire document;
2. Initial each of the five required tasks to be completed by the South Dakota Arts Council (listed on pages 4-6 of this document);
3. Choose the payment schedule for your study participation fee (at the bottom of page 6);
4. Initial the Contractual Clauses on pages 10 and 11 of this document;
5. Sign and date the Statement of Agreement on page 12; and
6. Return the original hardcopy to Ben Davidson at Americans for the Arts.
7. Upon receipt, an Americans for the Arts representative will sign the contract, and we will return a copy to you immediately.
8. In November 2010, you will receive a Study Welcome Packet containing the surveys and instructions necessary to begin and complete the data collection process.

We recommend that you keep a copy. We also recommend that you don't delay—we only guarantee participation for the first 200 partners that remit a signed contract.

INTRODUCTION TO ARTS & ECONOMIC PROSPERITY IV

The purpose of this national research study is to evaluate the economic impact of spending by the nation's nonprofit arts and culture organizations and the event-related spending of their audiences during fiscal year 2010. This new study will build on our three previous national economic impact efforts (published in 1994, 2000, and 2005) to document in unprecedented scope and detail the key role played by the nonprofit arts industry in strengthening local economies. Our highly-regarded research methodology has repeatedly proven to be credible and accurate. Arts administrators, legislators, advocates, media, and others from across the country regularly use our data to demonstrate the economic power that the arts and culture wield in their communities. During the past 20 years we have conducted economic impact studies in hundreds of U.S. communities ranging in geography (Alaska to Florida to Maine to Hawaii), population (3,000 to 3 million), and population density (rural to large urban).

LOCAL CUSTOMIZATION FOR THE STATE OF SOUTH DAKOTA

As one of our local and statewide study partners, you will help Americans for the Arts by collecting data from both cultural organizations and individual arts patrons in your community. These data will enable us to measure in a reliable and affordable manner the economic impact of the State of South Dakota's nonprofit arts and culture industry in terms of four key areas of the economy:

1. Full-time-equivalent jobs supported within the State of South Dakota
2. Personal income paid to residents of the State of South Dakota
3. Revenue generated for local (city/county) governments in the State of South Dakota
4. Revenue generated for the state government (if applicable)

There are two areas that we study: (1) the economic impact of spending by nonprofit arts and culture organizations, and (2) the impact of event-related spending by their audiences.

- 1. Measuring the Impact of Spending by Nonprofit Arts and Culture Organizations**
Expenditures by nonprofit arts, humanities, heritage, and culture organizations provide a significant impact on their local and state economies. They are employers, producers, consumers, and key members in marketing their cities and states. Spending by these organizations is far reaching: they pay their employees, purchase supplies, contract for services, and acquire assets. These actions, in turn, support local jobs, create household income, and generate revenue to their local and state governments.
- 2. Measuring the Impact of Induced Spending by Nonprofit Arts Audiences**
Nonprofit arts, humanities, heritage, and culture organizations – unlike most industries – leverage significant amounts of event-related spending by their audiences. Attendance generates related commerce for hotels, restaurants, retail shops, parking garages, and more. Our methodology provides an estimation of the economic impact of event-related spending by these audiences on jobs, personal income, and local and state government revenue. In addition, we analyze audience data by ZIP code to differentiate spending by cultural tourists from spending by local resident arts attendees.

AMERICANS FOR THE ARTS' PROPRIETARY ECONOMIC ANALYSIS METHOD

Input/output analysis will be used to determine the economic impact findings for the State of South Dakota. An input/output model is a system of mathematical equations that combine statistical methods and economic theory in an area of economic study called econometrics. It is based on a matrix which tracks the dollar flows between 533 finely detailed industries within your community and allows researchers to determine the economic impact of local spending on jobs, household income, and government revenue. **Our economist will customize an econometric input/output model to reflect the unique economy of the State of South Dakota.**

Your input/output model is designed to measure both the direct and indirect economic impacts of expenditures by your cultural organizations. That is, (1) the economic impact resulting from the initial expenditures by the nonprofit arts organizations and (2) the economic impact of the dollars being re-spent in—or "rippling" through—the region. How can a dollar be "re-spent" in a community? Consider this example:

A theater company purchases a gallon of paint from the local hardware store for \$10 (this generates the "direct economic impact"). The hardware store then uses a portion of the \$10 to pay the sales clerk's salary; the sales clerk re-spends some of the money for groceries; the grocery store in turn uses some of the money to pay its cashier; the cashier then spends some for the utility bill; and so on (these are the "indirect economic impacts").

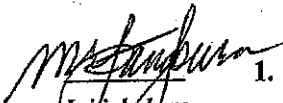
Your input/output model will measure each round of spending until the dollars spent by the arts organizations and audience members have "leaked" out of the local economy. How does money "leak" out of the community? To continue the example above:

The hardware store spent a portion of the \$10 to pay the clerks salary. But another portion of the \$10 was paid to a paint distributor. Because the paint distributor is located in another state, that portion of the \$10 has no impact on the local community—instead, that portion has "leaked" from the local economy.

THE REQUIREMENTS OF STUDY PARTICIPATION

This research study employs a national-local partnership strategy—one that we've used successfully for nearly 20 years. This means that both Americans for the Arts and the South Dakota Arts Council are required to accomplish certain tasks to ensure that the project is a success. It is also the primary reason that your project fee is so affordable.

There are five primary requirements of each of our *Arts & Economic Prosperity IV* study partners. Please consider their potential impact on the South Dakota Arts Council and your local arts community. This contract is not considered formalized unless ALL FIVE REQUIREMENTS are fully completed and/or initialed.


Initial above

1. Identify a primary project contact.

You need to name a local project manager for the data collection effort. It could be you, a member of your staff, a member of your board, or perhaps a volunteer. This person will act as a single point of contact for Americans for the Arts during the duration of the economic impact study. He/she will be responsible for your local work being completed in an accurate and timely manner.

Name of Primary Contact:

Michael PANGBURN

Job Title:

SDAC Exec. Director

Phone Number:

605-773-5507-(my direct #)

E-mail Address:

michael.pangburn@state.sd.us


Initial above

2. Provide a comprehensive list of nonprofit arts and culture organizations.

You are required to create as complete a list as possible of all nonprofit arts and culture organizations in the State of South Dakota (*i.e.*, not just your members or grantees). Each listing should include the organization name, the mailing address, the name of a single primary contact, one single e-mail address for the chosen primary contact, and the appropriate National Taxonomy of Exempt Entities (NTEE) definition code (*e.g.*, symphony, historical museum). This list must be provided to Americans for the Arts as a Microsoft Excel (.xls) spreadsheet. A complete listing of the NTEE codes will be included in the Study Welcome Packet that you will receive in November 2010. Americans for the Arts will also provide a Microsoft Excel template to ensure delivery of the list in the required format.

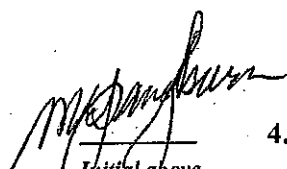
Most of our previous partners have used this study requirement as a method to "clean" their database. Additionally, most reported that they discovered a number of new arts and culture organizations in their community that they previously did not know existed.


Initial above

3. **Survey the eligible nonprofit arts and culture organizations on your list.** Americans for the Arts will provide a proprietary survey instrument that is designed to capture key data from the eligible nonprofit arts and cultural organizations on your list (e.g., expenditures, revenues, attendance). A paperless survey process will be implemented electronically by Americans for the Arts using our secure research server and advanced web-based survey technology. Still, two actions are required of the South Dakota Arts Council:

- A paper version of the survey must be delivered to eligible organizations for which you do not provide a valid e-mail address. It will be the responsibility of the South Dakota Arts Council to distribute and collect these paper surveys, and return them to Americans for the Arts for processing and analysis. The Organizational Expenditure Survey will be included in the Study Welcome Packet.
- Additionally, many organizations will not respond to our first, second, or third requests to complete our web-based survey. Upon completion of the web-based data collection effort, it will be the responsibility of the South Dakota Arts Council to follow up with non-responding organizations to solicit their survey response (e.g., e-mailing/faxing/mailling copies of the survey, coaxing by phone).

Conducting surveys of nonprofit organizations is a time intensive task. It is important that you be able to mobilize the necessary staff and/or volunteer labor to effectively complete this work. Each organization on your list is important. We understand, however, that the full cooperation of your arts community may be unrealistic. **We do NOT anticipate nor expect a 100 percent response rate.** Economic impact is based on the number of dollars spent in your community, so we want to capture as many of those dollars as possible. For the purposes of this project, an adequate response can be characterized as data collected from all the large and mid-sized budget organizations on your list and a sampling of the smaller organizations. **Local partners that provide an inadequate survey response may be disqualified from the project.** (Fortunately, we've completed more than 200 previous studies, and we've never had to do this!)


Initial above

4. **Collect at least 2,000 arts audience surveys.** Americans for the Arts will provide a proprietary survey instrument that is designed to measure the dollars spent by arts patrons as a direct result of their attendance to events that take place in the State of South Dakota. the South Dakota Arts Council is responsible for collecting a minimum of 2,000 "audience-intercept" surveys at events that take place in the State of South Dakota during calendar year 2011.

The Study Welcome Packet that you will receive in November 2010 will contain a survey protocol to help you select an appropriately broad range of events at which to survey as well as the information you need to train your local arts organizations to collect the audience surveys on your behalf.

5. Pay your subsidized project fee.

Each *Arts & Economic Prosperity IV* study partner is required to pay a subsidized participation fee. These fees are applied to the costs of data entry, data analysis, and the development of a customized input/output economic model for each participating community. In addition to the study participation fees, this study is also funded in part by a significant contribution by the Ruth Lilly Fund of Americans for the Arts as well as other local, regional, and national sponsors.

SECTION 1: COMPLETE THE SECTION BELOW to calculate the total participation fee for the South Dakota Arts Council:

- | | | |
|-------------------------------------|--|-----------------|
| <input checked="" type="checkbox"/> | Arts & Economic Prosperity IV participation fee | \$12,500 |
| | 2010 Membership Status = Preferred | |
| | Total Membership Discount on Participation Fee | -\$500 |
| <input type="checkbox"/> | Add-On 1—An Americans for the Arts representative (Randy Cohen or other Senior Staff member)
will travel to your community to participate in an event to release the local study findings and to meet with local elected officials, business leaders, and the press board. (This fee is the speaker fee only and does <u>not</u> include travel costs; travel costs will be billed separately after the presentation.) | \$1,700 |
| <input checked="" type="checkbox"/> | Add-On 2—Add the entire 2012 <i>Creative Industries</i> package for your community including the entire suite of local and state Standard Reports, as well as a Detailed Report that lists each for-profit and nonprofit arts-related business located in the State of South Dakota. | \$1,500 |

Total Study Participation Fee (sum of above) \$ 13,500

SECTION 2: CHOOSE YOUR PAYMENT SCHEDULE. There are two options, one of which provides the opportunity to spread your participation fee payments across multiple fiscal years.

- ☐ Option 1—Pay your entire project fee by November 30, 2010. We will send you an invoice.
- ☒ Option 2—Pay your project fee in three equal payments. The first payment will be due on November 30, 2010. The second payment will be due on August 31, 2011. The third payment will be due on May 31, 2012 (upon delivery of your final report). We will send you an invoice for each payment.

AMERICANS FOR THE ARTS' RESPONSIBILITIES AND REQUIREMENTS

Americans for the Arts is committed to your success and the success of the *Arts & Economic Prosperity IV* project. Together with our team of economists, we have developed a rigorous research methodology to measure the economic impact of the nonprofit arts and culture industry—one that has repeatedly proven to be credible and accurate. To increase the quality of the research and the impact of the findings, we are working to add strategic national partners to the project. For example, the U.S. Conference of Mayors and the National Association of Counties are two important partners that will amplify the research by publishing articles and disseminating reports to our nation's mayors and county commissioners.

Specifically, Americans for the Arts will provide you with all of the following:

1. Training, technical assistance, and support.

We will provide easy-to-understand methodologies, training, and technical assistance so you can effectively and efficiently collect your survey data. We will provide written protocols on how to conduct the surveys, sample letters of introduction, and successful survey follow-up strategies for those organizations that don't respond with the immediacy that we hope for.

2. Arts organization and audience spending surveys.

We will provide a camera-ready copy of our proprietary surveys for you to disseminate to (1) your local nonprofit arts and culture organizations (*i.e.*, the organizations for which you are not able to provide a valid e-mail address) and (2) attendees to arts and culture events that take place in your community. These proprietary surveys have been designed in partnership with our economist and tested in more than 200 communities around the U.S. In fact, Americans for the Arts has successfully collected more than 250,000 audience surveys from arts patrons during the past 10 years.

3. Data entry and cleaning.

Upon receipt of the completed arts organization and audience surveys, we will computerize, clean, authenticate, and tabulate the survey data for analysis in our economic model. Following our analysis, we will provide you with a two-page summary of the survey findings for your community.

4. State-of-the-art economic input/output analysis.

Input/output analysis will be used to determine the economic impact of the nonprofit arts in your community. An input/output model is a series of mathematical equations that combine economic theory and statistical methods to determine how the arts impact local jobs, household income, and government revenue. Our project economist will customize an input/output model specifically for the State of South Dakota. In addition to your survey results, this economic model includes wage, labor, and commerce data from local, state and federal governments. This widely-accepted methodology has been the basis for two Nobel prizes in economics.

5. Customized deliverables for the State of South Dakota.

In May 2012, Americans for the Arts will mail a CD-ROM to the South Dakota Arts Council containing electronic versions of the following project deliverables:

- A **customized final report** on the economic impact findings for the State of South Dakota (~30 pages). The easy-to-use report will describe the economic impact of the spending by nonprofit arts and culture organizations and the induced spending by arts audiences. It will also include a description of the project methodology, frequently asked questions, and frequently used terms. Finally, the report will include comparison data from cohort communities that also participated in the study.
- Two versions of a **one-page summary** of the findings for the State of South Dakota.
- Our *Arts & Economic Prosperity IV* **national report** including study background and methodology, detailed data tables on all 200 participating communities, frequently asked questions, and frequently used terms (300+ pages).
- Our **summary report** of the national findings with background and methodology (24 pages).
- Our four-fold **brochure** highlighting the national findings.
- Our customizable **PowerPoint presentation** of the national findings with talking points and quotes from influential public and private sector leaders (drop in the results for the State of South Dakota and you will be ready to meet with your elected officials!).
- Sample press release for use in preparing a customized release for your local media.
- The Partner Toolkit, a "how-to" guide to effective use of your economic impact findings that is based on the suggestions, recommendations, and best practices of previous study partners.

IMPORTANT NOTE: All project materials will be delivered digitally. All printing and production requirements are the responsibility of the South Dakota Arts Council and its local community partners/sponsors.

6. Local and national visibility and advocacy.

Americans for the Arts will publicize the results of the study and provide national and local visibility for your community and your local arts industry.

NEXT STEPS!

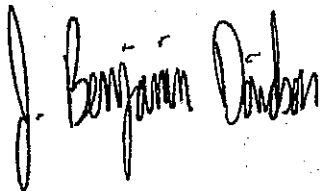
To cement the South Dakota Arts Council's status as an official *Arts & Economic Prosperity IV* local project partner ... complete this entire letter of agreement and return the original to me at my address below.

Then, in November, we will mail you the Study Welcome Packet containing all the materials that you need to get started when the data collection process begins on January 1, 2011!

This is a lengthy and involved research project, but I promise that the final product will be well worth the time and effort. I am very excited about this study, about working with you, and about celebrating the findings when we are all done!

Feel free to call me with any questions, comments, or concerns. Never hesitate to contact me. As the *AEP IV* project director, that's my job!

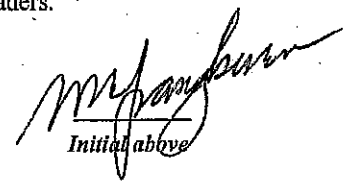
Sincerely,



Ben Davidson
Senior Director of Research Services
Americans for the Arts
The National Service Organization for America's Local Arts Agencies
1000 Vermont Avenue NW, Sixth Floor
Washington, DC 20005
202-371-2830 (phone)
202-371-0424 (fax)
bdavidson@artsusa.org

CONTRACTUAL CLAUSES

- *Arts & Economic Prosperity®* is a registered trademark of Americans for the Arts.
- All survey instruments and economic impact modeling techniques are proprietary and will remain the sole property of Americans for the Arts.
- All materials developed by the South Dakota Arts Council related to *Arts & Economic Prosperity IV*, including but not limited to raw survey data and completed surveys, shall be Work for Hire and as such shall be the property of Americans for the Arts. Should these materials ever be deemed not Work for Hire, the South Dakota Arts Council hereby irrevocably transfer to Americans for the Arts all right, title, and interest in and to the same.
- Americans for the Arts will retain all copyright to the finished products of *Arts & Economic Prosperity IV* that are delivered to the the South Dakota Arts Council by Americans for the Arts.
- The raw survey data collected for the purpose of completing the *Arts & Economic Prosperity IV* study and analyzed by Americans for the Arts will be considered completely confidential, and will not be shared with other project partners, the press, or the public.
- the South Dakota Arts Council is prohibited from changing the title of the study to anything other than *Arts & Economic Prosperity IV: The Economic Impact of Nonprofit Arts and Culture Organizations and Their Audiences in the State of South Dakota*. This title must appear in all print and online materials that are generated to promote and market the study including without limitation media releases, brochures, flyers, posters, handbills, web sites, web buttons, widgets, blogs, e-blasts, newsletters, or any other materials distributed to or seen by the public.
- the South Dakota Arts Council is required to credit Americans for the Arts as the source of the analysis and findings from the *Arts & Economic Prosperity IV* study in all print and online materials that reference the study.
- the South Dakota Arts Council is required to include the Americans for the Arts logo in all print and online materials that reference the *Arts & Economic Prosperity IV* study. Americans for the Arts will provide logo files appropriate for use online and in print to study partners.
- the South Dakota Arts Council is required to incorporate the approved credit line naming all of *Arts & Economic Prosperity IV*'s national and regional project funders/sponsors on all online and print materials that reference the *Arts & Economic Prosperity IV* study. The logo(s) of the national sponsor(s) of the study will also be required to be featured. Americans for the Arts will supply each study partner with the official credit line language and national/regional funder logo files.
- the South Dakota Arts Council is required to place an active URL or other web feature that directly links from the home page of their organizational web site (if applicable) to the Americans for the Arts economic impact resource page (www.AmericansForTheArts.org/EconomicImpact). It will be active by May 31, 2012 and will remain in place and active until at least June 30, 2013.
- Americans for the Arts will deliver the final report for the State of South Dakota in an editable Microsoft Word format. the South Dakota Arts Council is prohibited from modifying the data findings in any way. the South Dakota Arts Council may, however, make edits and additions to the Acknowledgments section of the report, add an introduction page written by a representative of the South Dakota Arts Council, and add pull-quotes from local community leaders.


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CONTRACTUAL CLAUSES *(continued)*

- the South Dakota Arts Council is prohibited from modifying the existing design of the final report that is delivered by Americans for the Arts. the South Dakota Arts Council may, however, create an entirely new report design that incorporates different covers and different imagery. If a new design is created, the title must not be changed and the Americans for the Arts logo must be displayed.
- Americans for the Arts may terminate this arrangement, including the South Dakota Arts Council's status as a Study Partner, for good reason as determined by Americans for the Arts in its reasonable judgment.
- Americans for the Arts and the South Dakota Arts Council do not intend to establish, and in fact do not hereby establish a partnership, joint venture, or agency relationship. Each party is responsible for the consequences of its own actions.
- To the extent that one party (the Indemnified Party) suffers or incurs liability, damages, or expense (including reasonable attorney fees) in defense of a third party legal proceeding arising out of the negligence or other wrongful conduct of the other party (the Indemnifying Party), the Indemnifying Party shall indemnify and hold harmless the Indemnified Party for the same.
- Any dispute of any nature arising out of or under this contract which is not disposed of by the agreement of the parties shall be resolved by binding arbitration pursuant to the rules of the American Arbitration Association. Such arbitration will be conducted in Washington, DC, and District of Columbia law shall apply. Any decision or award may be submitted to a court of competent jurisdiction for enforcement. Notwithstanding the foregoing, either party may seek injunctive or similar relief in a court of law.


Initial above

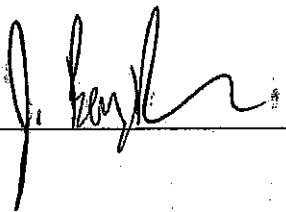
STATEMENT OF AGREEMENT

For Americans for the Arts

On behalf of Americans for the Arts, I look forward to our partnership on *Arts and Economic Prosperity IV: The Economic Impact of Nonprofit Arts Organizations and Their Audiences in the State of South Dakota*. We agree to comply with all of our requirements set forth herein.

Name: Benjamin Davidson

Title: Senior Director of Research Services

Signature: 

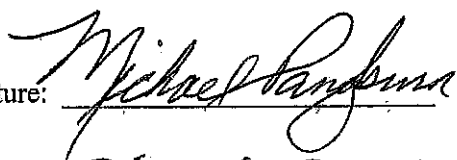
Date: 11/01/2010

For the South Dakota Arts Council

the South Dakota Arts Council acknowledges that we have retained a copy of this Letter of Agreement. We agree to comply with all of our requirements set forth herein. I acknowledge that this contract is the sole governing agreement for these services. I confirm that I am authorized to execute and am executing this document on behalf of the South Dakota Arts Council and in so doing legally bind the South Dakota Arts Council. I further acknowledge that if the foregoing representation of authority is false, I shall be personally liable for all harm suffered by Americans for the Arts as a result of such misrepresentation.

Name: Michael Pangburn

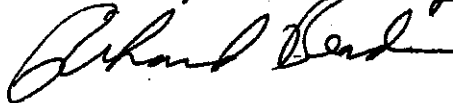
Title: Executive Director

Signature: 

Date: 10-29-2010

Richard Beede

Dept. Secretary



10-29-10

State Agency Coding (MSA Center): 0441000229AO/0441000706

State Agency MSA Company for which contract will be paid: 2010/3143

Object/Sub-object MSA account to which voucher will be coded: 52041300

Name and phone number of contact person in State Agency who can provide additional information regarding this contract: Michael Pangburn, 773-3301

